IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3855 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJKUMAR PETROLEUM SERVICES

Versus

STATE OF GUJARAT

Appearance:
Ms.Pahwa for
M/S THAKKAR ASSOC. for Petitioner
Mr.A.J.Desai, learned A.G.P. for the respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/05/2000

ORAL JUDGEMENT

1. On the request of both the sides, the matter was taken up for final hearing.I have heard learned counsel for both the sides.

2. The petitioner herein is running a petrol/diesel

Pump under licence No.4/81 since last more than 20 years. It is the petitioner's case that he has never been subjected to any departmental proceedings for contravention of provisions of Essential Commodities Act and Control Order of 1981. On 18.9.99 the District Supply Officer, Surat made an inspection of the petitioner's petrol/diesel pump and 4 samples of petrol/diesel were drawn by the District Supply Officer. Out of these 4 samples, 2 samples of petrol were taken from the underground tank whereas 1 sample of petrol was taken from Tanker No.GJ-5-U-1331. 1 Sample of diesel was drawn from the underground tank. Said samples were drawn and sealed in absence of the petitioner's partner who is looking after the business. The specimen of said samples were given to the petitioner's representative who was present at the time of inspection. After five days, 3 bottles containing each sample of petrol were supplied in the name of the petitioner Firm. The samples collected by the respondent No.2 i.e. District Supply Officer, Surat were sent for Laboratory testing by the respondent No.2 to the Government Laboratory under different code numbers. Petitioner's case is that in this Laboratory test only negligible density variation within the prescribed limits were found as per the details given in the tabular form under para 2 of the petition.

Through this petition, the petitioner has raised the grievance that samples were not collected as per the prescribed procedure in presence of the dealer, the same were supplied after 5 days of the inspection, written objections dt.23.9.99 were submitted before the District Supply Officer. The petitioner has a genuine apprehension about the credibility of the Laboratory testing carried out on these samples and, therefore, the petitioner applied for re-testing the samples of the petrol supplied to the petitioner at the Regional Forensic Science Laboratory. Whereas such request has not been entertained, the present petition has been filed seeking a direction setting aside the order/communication dt.17.12.99 passed by the District Supply Officer, Surat informing the petitioner that nothing is required to be done in respect of the request of the petitioner for re-testing. A copy of this communication dt.17.12.99 has been enclosed with the petition as Annexure 'G'. The prayer has also been made that respondent No.2 be directed to send the sample supplied to the petitioner for re-testing to the Government approved Laboratory at the petitioner's cost.

3. Ms.Pahwa, learned counsel for the petitioner, has

made reference to a copy of the circular dt.8.4.99 Annexure 'C' with the petition which contains guidelines for taking action for offences committed by dealers of petrol/diesel pumps. Clause (f) of this Circular under the head of 'Departmental action' gives liberty to the dealer, if he so chooses, to send bottle of the sample given to him to an authorised laboratory for testing. Clause (f) is reproduced as under:-

"(f) If, during inspection, the variation in density of the product is found to be within (+) (-) 0.0030, and if the Inspecting Officer draws sample of the product for sending to a laboratory for testing, the dealer will be at liberty, if he so chooses, to send a bottle of the sample given to him to an authorised laboratory for testing. The test report obtained by the dealer from the laboratory to whom he has sent his bottle of the sample can be submitted by him as additional evidence in the event of the competent authority initiating any action against the dealer. However, it is clarified that competent authority will not be bound by the laboratory report obtained by the dealer. The competent authority, under the circumstances, will at best be able to compare the report obtained by the dealer with the report of the laboratory to whom Government has sent the sample for testing, and can then proceed as he deems fit, on the merits of the case."

Petitioner herein sought to exercise such liberty and approached the Regional Forensic Science Laboratory, Surat but the Deputy Director of the Regional Forensic Science Laboratory, Surat sent a letter dt: 3.11.99 to the petitioner informing him that this Laboratory takes only such samples for testing which are sent by Supplies Department of the State Government. The petitioner, therefore, approached the Supplies Department, but the District Supply Officer, Surat had sent a letter dt.17.12.99 to the petitioner wherein it has been stated that as per the Central Government direction, Indian Oil Corporation Ltd.'s Laboratory at Jawharnagar, District Baroda is the only Laboratory where such test can be conducted and the State Government has already got such test conducted at the aforesaid Laboratory at Baroda and now the question of retesting at the instance of the petitioner simply does not arise.

4. As per the reply dt:9.5.2000 filed on behalf of the respondent No.2, as per Circular dt.8.4.99 issued by the Government of Gujarat, the petitioner himself can send the sample to the authorised Laboratory for testing

and there is no question of sending the sample through any Government authority. Mr. A.J.Desai, learned A.G.P. has made reference to Annexure 'A' i.e. Extraordinary Gazette Notification issued by the Government of Gujarat dt.8.2.99. As per Schedule III appended with this Notification, the Department had sent sample for testing to the Laboratory mentioned at Item No.42 and within the State of Gujarat, there is yet another Laboratory at Sr.No.25 i.e. Indian Oil Corporation Ltd., Laboratory, Railway Colony Post., Ahmedabad 380019. In order to avoid any complication, since it is stated in para 7 of the reply itself that there is no question of sending the sample through any Government authority and the circular dt.8.4.99 makes it permissible for the petitioner dealer in the facts of this case to send bottle of sample to any authorised laboratory for testing under Clause (f) of the Circular dt.8.4.99 and whereas the laboratory mentioned at Sr.No.25 of Schedule III is also one such Laboratory in Gujarat itself, it will be open for the petitioner to send the sample, which is lying with him for testing to the Indian Oil Corporation Ltd., Laboratory, Railway Colony Post, Ahmedabad 380019 or to any other authorised Laboratory of Indian Oil Corporation Ltd. included in Schedule III with the Govt. of Gujarat Notification dt.8.2.99 at Sr.No.(13) to (47E), where such test is possible. The report of such testing made by the concerned Laboratory, as aforesaid, shall be tendered before the concerned Department for the purpose of further action. It is made clear that in doing so the order dt.17.12.99 Annexure 'G' shall be no impediment against the petitioner.

5. With the observations and directions, as aforesaid, this Special Civil Application is allowed. Rule is made absolute. No order as to costs.

(M.R.Calla,J)